



U.S. Citizenship
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MAR 24 2010

FILE: [REDACTED] Office: HONOLULU, HI Date:

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

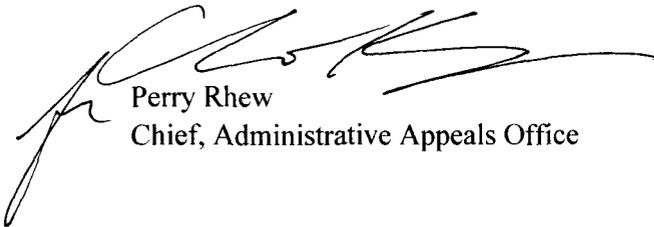
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Honolulu, Hawaii. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of South Korea who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willfully misrepresenting a material fact to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated April 10, 2007.

On appeal, counsel contends, *inter alia*, that the applicant is not inadmissible because the applicant did not willfully misrepresent a material fact. Specifically, counsel contends the applicant did not know Guam was part of the United States and that she overstayed her previous visit to Guam because she lost her passport. *Brief in Support of the Appeal*, dated July 6, 2009.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on July 6, 2006; a letter from [REDACTED] a letter from the applicant; documentation of the applicant's pregnancy; letters of support, including from the U.S. Navy; documentation addressing the applicant's lost passport; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general. — Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i)(1) provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in

extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

The record shows that the applicant entered the United States as a visitor on February 1, 2006. On July 6, 2006, she married a U.S. citizen, [REDACTED]. In August 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) in conjunction with the petition for alien relative (Form I-130) filed by [REDACTED] on her behalf. At her adjustment interview, the applicant told the immigration officer that she had never previously been to the United States. When asked whether she had ever visited Guam and remained beyond her period of authorized stay, the applicant stated that she had visited Guam and overstayed because her passport had been stolen. The applicant contends she did not know until the adjustment interview that Guam is a part of the United States and that she did not intentionally misrepresent her previous visit to Guam. The applicant submits a copy of a report from the Guam Police Department as well as receipts of advertisements indicating that she had lost her passport in Guam on April 19, 2002.

The AAO concurs with the district director that “[i]t is accepted that it was possibly not known that Guam is part of the United States.” *Decision of the District Director*, dated August 15, 2007 (denying the applicant’s Motion to Reopen and Reconsider). However, as the district director found, the record shows two other unexplained inconsistencies. First, on her visa application, the applicant answered “no” to the question “[h]ave you ever lost a passport or had one stolen?” *Supplemental Immigrant Visa Application*, dated August 16, 2005. In addition, the applicant, who purportedly did not know Guam was part of the United States, failed to list Guam in response to the question “[l]ist all countries you have entered in the last ten years.” *Id.* (listing only Australia in 2002, the same year she visited Guam). Significantly, despite the district director’s decision specifically addressing these two inconsistencies, the applicant has not discussed them. *See Brief in Support of the Appeal* at 3, dated July 6, 2009 (acknowledging that the district director found that “she did not list Guam as another country she visited during the last 10 years [and] she checked ‘no’ for a question as to whether she had lost her passport,” but failing to provide any explanation for either inconsistency).

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Counsel’s contention that the applicant’s visit and overstay in Guam is not material, *Brief in Support of the Appeal, supra*, at 7-9, is unpersuasive as it fails to address the additional inconsistencies mentioned above. The applicant’s failure to accurately list all of the “countries” she purportedly thought she had visited in the past ten years and her inexplicable failure to disclose the fact that she had previously lost her passport are, indeed, material because they shut off a line of inquiry that may have led the consulate to deny her visa application. *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961).

Furthermore, counsel’s reliance on *Kungys v. United States*, 485 U.S. 759 (1988), is misplaced.

██████████ was a denaturalization case in which the government bore the burden of proving that any misrepresentation was material. *Kungys*, 485 U.S. at 759. In contrast, in the instant case, the applicant is not a naturalized U.S. citizen. Section 291 of the Act, 8 U.S.C. § 1361, clearly places the burden of proof on the applicant:

Burden of proof upon alien

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this chapter

Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, or should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

In this case, the applicant's husband, ██████████, states that he is a nuclear trained Machinist Mate in the U.S. Navy. He contends this job is a "fairly elite job since personnel that are nuclear trained only make up approximately 2% of the Navy." ██████████ states that he and his wife were married in July 2006 and that at the end of the month, she was pregnant. However, according to ██████████, a few weeks later, she had an early miscarriage and shortly thereafter, was hospitalized for severe

depression due to the miscarriage and her lack of activities while her husband was at sea. [REDACTED] states that his wife decided to go back to school to improve her English and volunteers at the humane society. In addition, she manages all of the finances while [REDACTED] is away and keeps his parents informed of any news regarding his boat. *Letter from [REDACTED]*, dated February 17, 2007. Documentation in the record indicates that the applicant was pregnant again with a due date of November 2, 2009. *Certificate of Patient's Medical Status*, dated May 20, 2009.

A letter from the U.S. Navy states that the applicant was seen for "Suicidal Ideations and Depression" in September 2006. The letter states that [REDACTED] was very tearful and upset over the incident and that he was given leave from the boat in order to take care of his wife. *Letter from [REDACTED]*, dated May 1, 2007; *see also Letter from [REDACTED]*, dated June 24, 2009 (stating that an "unfavorable ruling in this case . . . would almost certainly result in [REDACTED] inability to continue service in the United States Navy" and describing him as a "highly qualified Submariner, Nuclear Plant Operator, Mechanical Engineer, and model sailor who excels in all areas of assignment").

After a careful review of the evidence, it is not evident from the record that the applicant's husband, [REDACTED] would suffer extreme hardship as a result of the applicant's waiver being denied.

This matter arises in the Honolulu district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The AAO finds that if [REDACTED] had to move to South Korea to be with his wife, he would experience extreme hardship. The record shows that [REDACTED] was born in the United States and that both of his parents are U.S. citizens living in the United States. *Biographic Information (Form G-325A)*, dated July 11, 2006. According to counsel, all of [REDACTED] family members, including his brother, two uncles, two aunts, and five cousins, are U.S. citizens living in the United States. *Brief in Support of the Appeal, supra*, at 9-10. In addition, [REDACTED] grandmother lives in the United States as a lawful permanent resident. *Id.* The record also shows that [REDACTED] does not speak Korean and that, aside from his wife, he has no family ties in South Korea. Under these circumstances, the AAO finds that the family separation [REDACTED] would experience if he had to move to South Korea amounts to extreme hardship.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although

█ claims that his wife suffered a miscarriage which led to her being hospitalized for severe depression, there is no letter from any health care professional substantiating this claim. Similarly, although a letter from the U.S. Navy suggests that █ wife, the applicant, experienced suicidal ideations, *Letter from █ supra*, significantly, neither the applicant nor her husband claim she has ever contemplated or attempted suicide. Without more detailed information, such as a letter in plain language from a health care professional addressing the applicant's mental health and the circumstances surrounding her hospitalization, the AAO is not in the position to reach conclusions regarding the severity of any medical or mental health condition or the treatment and assistance needed. The present record fails to show that the applicant suffers from any health condition, the effects of which would render █ hardship extreme.

If █ decides to remain in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. In the United States, █ has the support of all of his relatives as well as his colleagues in the U.S. Navy. Although █ will undoubtedly suffer upon separation from the applicant, federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, the Ninth Circuit has explained that the common results of deportation, including the separation of immediate family members, are insufficient to prove extreme hardship, which is hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996). *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (citing *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) and finding that family separation does not constitute extreme hardship without a showing of a more extreme impact).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.